ATTORNEY FOR APPELLANT:

MICHAEL S. GREENE
Elkhart, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

CHRISTOPHER AMERICANOS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

KENNETH VANGOEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0701-CR-26
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Joseph Sutton, Special Judge
Cause No. 20C01-0404-CM-9

May 11, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Kenneth Vangoey appeals his conviction for one count of Class A misdemeanor contributing to the delinquency of a minor. We affirm in part, vacate in part, and remand.

Issues

Vangoey states the issue as whether there is sufficient evidence to support his conviction. We raise the issue, sua sponte, whether Vangoey's simultaneous convictions for Class A misdemeanor contributing to the delinquency of a minor and Class B misdemeanor false informing violates double jeopardy protections.

Facts

On the evening of December 7, 2003, L.P., a fifteen-year old female, ran away from her mother's home. L.P.'s parents are divorced, and although she usually lived with her father, former Judge Benjamin Pfaff, she had requested to stay with her mother that evening after spending the weekend in a mental health facility. L.P.'s mother, Connie Martin, called Pfaff around 10:30 p.m. that evening to inform him that L.P. had run away, and the two drove around in search of L.P. until about 2:00 a.m. the following morning.

At about 6:00 a.m. on December 8, 2003, L.P. arrived at Vangoey's residence, knocked on the door, and requested to use his phone. Although Vangoey and L.P. had never met before, he allowed L.P. to come inside the house and use the phone. L.P. then asked Vangoey to drive her to East Lake Estates Athletic Club, and he agreed. Vangoey dropped L.P. off there, but she returned to his house later that evening and requested to use his phone again. Vangoey allowed her to come inside the house and use the phone again.

While L.P. was inside Vangoey's house using his phone that evening, two "hysterical" youths came to Vangoey's residence and beat on his front door. Tr. pp. 37, 39. The youths yelled out, "the Judge [is] coming and he's bringing the cops," and then sped off. Id. at 39. Pfaff had learned that L.P. was at Vangoey's house from L.P.'s ex-boyfriend. Officer Donald McQuarie then arrived at Vangoey's house and told him that he was searching for L.P. and that she was a runaway. Vangoey kept the door only slightly ajar, and replied that he knew she was a runaway. He then lied to Officer McQuarie by telling him that L.P. was not in the residence. Officer McQuarie then informed Vangoey that he could be "in quite a bit of trouble" if L.P. was in his residence considering that he knew she was a runaway. Id. at 23. Vangoey responded that he "understood." Id. at 24.

Then, Pfaff and Martin arrived at Vangoey's residence. Pfaff told Officer McQuarie that he wanted to speak with Vangoey himself. Pfaff and McQuarie knocked on Vangoey's door together. Vangoey answered the door, again leaving it only slightly ajar. Pfaff told Vangoey that he was L.P.'s father, that L.P. was a fifteen-year old runaway, and that he knew she was there. Vangoey then said that she had been there, but had left. Pfaff requested to enter the house, but Vangoey refused and told him to get a warrant. Pfaff began yelling for L.P. to come out, but Vangoey closed the door on him. Pfaff then began using his phone to make arrangements for a search warrant. While Pfaff was making those arrangements, Martin spotted L.P. running out the back door of Vangoey's house. L.P. was apprehended after a short chase.

An investigator for the Whitley County Prosecutor's Office later recorded a conversation he had with Vangoey as part of his investigation. Vangoey acknowledged in that recording that L.P. was in his house on December 8, 2003, when he told Officer McQuarie and Pfaff that she was not there.

The State charged Vangoey with one count of Class A misdemeanor contributing to the delinquency of a minor and one count of Class B misdemeanor false informing. Vangoey was convicted of both counts at a bench trial on August 22, 2006, and sentenced to a one year suspended sentence for contributing to the delinquency of a minor and 180 days executed for false informing. The sentences were to be served consecutively, and Vangoey has already served the 180 days executed for false informing. Vangoey now appeals his conviction for contributing to the delinquency of a minor.

Analysis

I. Sufficiency of the Evidence

Vangoey argues that there is insufficient evidence to support his conviction for contributing to the delinquency of a minor because he did not know L.P. at the time she ran away from home, and he therefore could not have encouraged, aided, or induced her to commit the delinquent act of running away. When reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. Trimble v. State, 848 N.E.2d 278, 279 (Ind. 2006). If there is sufficient evidence of probative value to support the conclusion of the trier of fact then the verdict will not be disturbed. Id. Put differently, we must affirm if the probative evidence and

reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Id.

Indiana Code Section 35-46-1-8(a) provides, "A person at least eighteen (18) years of age who knowingly or intentionally encourages, aids, induces, or causes a person less than eighteen (18) years of age to commit an act of delinquency (as defined by IC 31-37-1 or IC 31-37-2) commits contributing to delinquency, a Class A misdemeanor." Indiana Code Section 31-37-2-2 further provides, "A child commits a delinquent act if, before becoming eighteen (18) years of age, the child leaves home: (1) without reasonable cause; and (2) without permission of the parent, guardian, or custodian, who requests the child's return." Accordingly, the delinquent act of leaving home without permission is a continuing offense that commences when all three requirements under Indiana Code Section 31-37-2-2 have been satisfied and ends only when the child is recovered by the parent, guardian, or custodian.[1]

In this case, upon arriving at Vangoey's house the police officers informed Vangoey that L.P. was a runaway. Vangoey responded that he knew L.P. was a runaway. Pfaff further informed Vangoey that L.P. was his daughter, that she was a runaway, and that he wanted her to come home. Vangoey then falsely informed the police and Pfaff that L.P. was not in the residence, urged them to return with a search warrant if they wanted to enter his house, and then closed the door. Based on these facts, it is clear that

[1] Vangoey relies on Shorter v. State, 166 Ind. App. 171, 176, 334 N.E.2d 710, 713 (1975), to support his contention that aiding a juvenile in remaining away from home after the juvenile has run away is not a criminal act. However, Vangoey's reliance on Shorter is misplaced because the holding in that case relied upon the court's interpretation of Indiana Code Section 31-5-7-4(4), which has since been repealed and fundamentally altered by Indiana Code Section 31-37-2-2. Thus, Shorter is no longer relevant authority.

Vangoey aided L.P. in committing the delinquent act of leaving home without permission. L.P.'s delinquency commenced when Pfaff requested her to return home and ceased when she was recovered shortly thereafter while attempting to flee Vangoey's house. During that period of delinquency, Vangoey both harbored L.P. in his home and falsely informed police officers and L.P.'s father that she was not inside the residence so as to prevent her return to her parents. There is sufficient evidence to support Vangoey's conviction for Class A misdemeanor contributing to the delinquency of a minor.

II. Double Jeopardy

We next address, sua sponte, the issue whether Vangoey's simultaneous convictions for Class A misdemeanor contributing to the delinquency of a minor and Class B misdemeanor false informing subjected him to double jeopardy. We raise the issue sua sponte because a double jeopardy violation, if shown, ensnares fundamental rights. Scott v. State, 855 N.E.2d 1068, 1074 (Ind. Ct. App. 2006). Vangoey was convicted of Class B misdemeanor false informing for lying to Officer McQuarie when asked if L.P. was inside of his house, and convicted of Class A misdemeanor contributing to the delinquency of a minor seemingly for the same action.

Article I, Section 14 of the Indiana Constitution provides that "no person shall be put in jeopardy twice for the same offense." The Double Jeopardy clause is violated if there is "a reasonable possibility that the evidentiary facts used by the fact-finder to establish the essential elements of one offense may also have been used to establish the essential elements of a second challenged offense." Guyton v. State, 771 N.E.2d 1141, 1142 (Ind. 2002) (citing Richardson v. State, 717 N.E.2d 32, 53 (Ind. 1999)). In addition

to the instances covered by Richardson, "we have long adhered to a series of rules of statutory construction and common law that are often described as double jeopardy, but are not governed by the constitutional test set forth in Richardson." Guyton, 771 N.E.2d at 1143. The list of five categories from Justice Sullvan's concurrence in Richardson includes, "[c]onviction and punishment for a crime which consists of the very same act as an element of another crime for which the defendant has been convicted and punished." Richardson, 717 N.E.2d at 55 (Sullivan, J., concurring).

In this case, it appears to us that the same evidence, i.e., Vangoey's lying to a police officer, was used to establish both convictions. It appears that under Justice Sullivan's double jeopardy category stated in Richardson, described above, Vangoey was convicted and punished for Class B misdemeanor false informing for lying to a police officer, the very same act that also was an element here of Class A misdemeanor contributing to the delinquency of a minor. We therefore vacate Vangoey's conviction for Class B misdemeanor false informing, and remand to the trial court for correction of its records consistent with this opinion.

Conclusion

The evidence in this case was sufficient to support Vangoey's conviction for Class A misdemeanor contributing to the delinquency of a minor. Vangoey's convictions for both Class A misdemeanor contributing to the delinquency of a minor and Class B misdemeanor false informing subjected him to double jeopardy. We affirm Vangoey's conviction for Class A misdemeanor contributing to the delinquency of a minor, vacate

his conviction for Class B misdemeanor false informing, and remand to the trial court for disposition consistent with this opinion.

Affirmed in part, vacated in part, and remanded.

NAJAM, J., and RILEY, J., concur.